

Department of Energy

Pt. 903

\$25,000 or under. The ratification authority of the HCA is nondelegable.

[61 FR 41704, Aug. 9, 1996, as amended at 76 FR 7689, Feb. 11, 2011]

901.603 Selection, appointment, and termination of appointment.

901.603–1 General.

The DOE Order 361.1B, Acquisition Career Management Program, or its successor order, sets forth the requirements and responsibilities for the DOE and NNSA Acquisition Career Development Program.

[76 FR 7689, Feb. 11, 2011]

901.603–70 Appointment of contracting officers and contracting officer's representatives.

See the DOE Order 541.1B, Appointment of Contracting Officers and Contracting Officer Representatives, or its successor order, for procedures on the appointment of contracting officers and contracting officer's representatives.

[76 FR 7689, Feb. 11, 2011]

PART 902—DEFINITIONS OF WORDS AND TERMS

Subpart 902.1—Definitions

Sec.

902.101 Definitions.

Subpart 902.2—Definitions Clause

902.201 Contract clause.

AUTHORITY: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

SOURCE: 76 FR 7690, Feb. 11, 2011, unless otherwise noted.

Subpart 902.1—Definitions

902.101 Definitions.

Agency Head or *Head of the Agency* means—

(1) For the Department of Energy (DOE)—

- (i) The Secretary;
- (ii) The Deputy Secretary; or
- (iii) Under Secretaries of the Department of Energy.

(2) For the National Nuclear Security Administration (NNSA) the Adminis-

trator, also known as the Under Secretary of Nuclear Security.

Department of Energy (DOE) means, as used in the DEAR, the Department of Energy and includes the National Nuclear Security Administration (NNSA), unless otherwise specified.

Senior Procurement Executive means for the Department of Energy, the Director, Office of Procurement and Assistance Management and for the National Nuclear Security Administration, the Director, Office of Acquisition and Supply Management.

Subpart 902.2—Definitions Clause

902.201 Contract clause.

Insert the clause at 952.202–1, Definitions, in solicitation and contracts that exceed the simplified acquisition threshold.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 903.1—Safeguards

Sec.

903.101 Standards of conduct.

903.101–3 Agency regulations.

903.104–1 Definitions.

903.104–7 Violations or possible violations (DOE coverage—paragraph (a)).

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.

903.204 Treatment of violations.

Subpart 903.3—Reports of Suspected Antitrust Violations

903.303 Reporting suspected antitrust violations.

Subpart 903.4—Contingent Fees

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

903.101

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

Subpart 903.7—Voiding and Rescinding Contracts

903.700 Scope of subpart.

Subpart 903.9—Whistleblower Protections for Contractor Employees

903.900 Scope of subpart.

903.901 Definition.

903.902 Applicability.

903.970 Remedies.

903.971 Contract clause.

Subpart 903.10—Contractor Code of Business Ethics and Conduct

903.1004 Contract clauses.

AUTHORITY: 42 U.S.C. 7101 et seq. and 50 U.S.C. 2401 et seq.

SOURCE: 49 FR 11940, Mar. 28, 1984, unless otherwise noted.

Subpart 903.1—Safeguards

903.101 Standards of conduct.

903.101-3 Agency regulations.

Detailed rules applicable to the conduct of DOE employees are set forth in 10 CFR part 1010.

[49 FR 11940, Mar. 28, 1984, as amended at 60 FR 47307, Sept. 12, 1995]

903.104-1 Definitions.

As used in this section and for the purposes of the post-employment restrictions at 48 CFR 3.104-2(b)(3)—

Deputy program manager means the individual within DOE who normally acts as the program manager in the absence of the program manager, and does not mean an individual who occasionally acts for the program manager or the deputy program manager.

Program manager means the individual within DOE who:

(1) Exercises authority on a day-to-day basis to manage an acquisition program—

48 CFR Ch. 9 (10-1-11 Edition)

(i) For a system attained through the acquisition process; and

(ii) With one or more contracts, at least one of which has a value exceeding \$10,000,000; and

(2) Is generally the person at the lowest organizational level who has authority to make technical and budgetary decisions on behalf of DOE.

System means a combination of elements that function together to produce the capabilities required to fulfill a mission need, including, but not limited to hardware, equipment, software, or any combination thereof.

[63 FR 56851, Oct. 23, 1998. Redesignated and amended at 74 FR 36361, July 22, 2009]

903.104-7 Violations or possible violations.

(a) Except for Headquarters activities, the individual within DOE responsible for fulfilling the requirements of 48 CFR 3.104-7(a) (1) and (2), relative to contracting officer conclusions on the impact of a violation or possible violation of subsections 27 (a), (b), (c) or (d) of the Office of Federal Procurement Policy Act, shall be the legal counsel assigned direct responsibility for providing legal advice to the contracting office making the award or selecting the source. The legal counsel is the Chief Counsel for the Operations Offices or the Federal Energy Technology Center; the Counsel, or the Chief Counsel, for the Support Offices or the Naval Reactors Offices; the General Counsel for National Nuclear Security Administration (NNSA), and the General Counsel for the Power Administrations. For Headquarters activities, the individual designated to perform the responsibilities in 48 CFR 3.104-7(a) (1) and (2) regarding questions of disclosure of proprietary or source selection information is the Assistant General Counsel for Procurement and Financial Assistance. The designated individual for other questions regarding 48 CFR 3.104-7(a) (1) and (2) for Headquarters activities is the Agency Ethics Official (Designated Agency Ethics Official).

[62 FR 53756, Oct. 16, 1997. Redesignated and amended at 74 FR 36361, July 22, 2009]

Department of Energy

903.900

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the Head of the Contracting Activity (HCA) in writing detailing the circumstances. The HCA will evaluate the report and, if the report appears to substantiate the allegations, the matter will be referred to the Senior Procurement Executive for disposition.

[49 FR 11940, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 74 FR 36378, July 22, 2009]

903.204 Treatment of violations.

Apparent violations will be processed in accordance with the debarment and suspension rules set forth at Title 10, part 1035, of the Code of Federal Regulations.

Subpart 903.3—Reports of Suspected Antitrust Violations

903.303 Reporting suspected antitrust violations.

(a) Potential anti-competitive practices, such as described in 48 CFR 3.301, and antitrust law violations as described in 48 CFR 3.303, evidenced in bids or proposals, shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Senior Procurement Executive. The Office of General Counsel will provide reports to the Attorney General, as appropriate.

[50 FR 12183, Mar. 27, 1985, as amended at 59 FR 9104, Feb. 25, 1994; 76 FR 7690, Feb. 11, 2011]

Subpart 903.4—Contingent Fees

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(b) Before the Chief of the Contracting Office initiates appropriate action, the action shall be reviewed by Legal Counsel.

[76 FR 7690, Feb. 11, 2011]

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity, or designee, to the Office of General Counsel.

[49 FR 11940, Mar. 28, 1984, as amended at 74 FR 36361, July 22, 2009]

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

(a) When the needs of the Government cannot be reasonably supplied by sources other than employees of the Government or sources which are substantially owned or controlled by Government employees, the contracting officer, in accordance with 48 CFR 3.602, may submit, through the HCA, a request to the Senior Procurement Executive, with appropriate justification, for approval of an exception to the prohibitions contained in 48 CFR 3.601.

[49 FR 11940, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 74 FR 36378, July 22, 2009; 76 FR 7690, Feb. 11, 2011]

Subpart 903.7—Voiding and Rescinding Contracts

903.700 Scope of subpart.

The HCA is the designee for determining whether to void or rescind a contract. This authority is nondelegable.

[76 FR 7690, Feb. 11, 2011]

Subpart 903.9—Whistleblower Protections for Contractor Employees

SOURCE: 65 FR 81005, Dec. 22, 2000, unless otherwise noted.

903.900 Scope of subpart.

This subpart implements the DOE Contractor Employee Protection Program as set forth at 10 CFR part 708.

903.901

Part 708 establishes criteria and procedures for the investigation, hearing, and review of allegations from DOE contractor employees of employer reprisal resulting from employee disclosure of information to DOE, to Members of Congress, or to the contractor; employee participation in proceedings before Congress or pursuant to this subpart; or employee refusal to engage in illegal or dangerous activities, when such disclosure, participation, or refusal pertains to employer practices which the employee believes to be unsafe; to violate laws, rules, or regulations; or to involve fraud, mismanagement, waste, or abuse.

[65 FR 81005, Dec. 22, 2000. Redesignated at 74 FR 36361, July 22, 2009]

903.901 Definition.

Contractor, as used in this subpart, has the meaning contained in 10 CFR 708.2.

[65 FR 81005, Dec. 22, 2000. Redesignated at 74 FR 36361, July 22, 2009]

903.902 Applicability.

10 CFR part 708 is applicable to complaints of retaliation filed by employees of contractors, and subcontractors, performing work on behalf of DOE directly related to DOE-owned or leased facilities, if the complaint stems from a disclosure, participation, or refusal described in 10 CFR 708.5.

[65 FR 81005, Dec. 22, 2000. Redesignated at 74 FR 36361, July 22, 2009]

903.970 Remedies.

(a) Contractors found to have retaliated against an employee in reprisal for such disclosure, participation or refusal are required to provide relief in accordance with decisions issued under 10 CFR part 708.

(b) 10 CFR part 708 provides that for the purposes of the Contract Disputes Act (41 U.S.C. 605 and 606), a final decision issued pursuant to 10 CFR part 708 shall not be considered to be a claim by the Government against a contractor or a decision by the contracting officer subject to appeal. However, a contractor's disagreement and refusal to comply with a final decision could result in a contracting officer's decision to disallow certain costs or to terminate the

48 CFR Ch. 9 (10–1–11 Edition)

contract for default. In such case, the contractor could file a claim under the Disputes clause of the contract regarding the disallowance of cost or the termination of the contract.

903.971 Contract clause.

The contracting officer shall insert the clause at 952.203–70, Whistleblower Protection for Contractor Employees, in contracts that involve work to be done on behalf of DOE directly related to activities at DOE-owned or leased sites.

Subpart 903.10—Contractor Code of Business Ethics and Conduct

903.1004 Contract clauses.

(b)(2)(ii) Insert the DOE Web site address <http://ig.energy.gov/hotline.htm> in paragraph (b)(3) of the 48 CFR 52.203–14 clause, Display of Hotline Poster(s).

[76 FR 7690, Feb. 11, 2011]

PART 904—ADMINISTRATIVE MATTERS

Subpart 904.4—Safeguarding Classified Information Within Industry

Sec.

904.401 Definitions.

904.402 General.

904.404 Solicitation provision and contract clause.

Subpart 904.6 [Reserved]

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

Subpart 904.8—Government Contract Files

904.803 Contents of contract files.

904.804 Closeout of contract files.

904.804–1 Closeout by the office administering the contract.

904.805 Storage, handling, and disposal of contract files.

Subpart 904.70—Facility Clearance

904.7000 Scope of subpart.

904.7001 Applicability.

904.7002 Definitions.

904.7003 Disclosure of foreign ownership, control, or influence.

904.7004 Findings, determination, and contract award or termination.